

Title 33
ENVIRONMENTAL QUALITY
Part XI. Underground Storage Tanks

Chapter 11. Financial Responsibility

§1121. Use of the Motor Fuels Underground Storage Tank Trust Fund

The administrative authority was authorized by R.S. 30:2194-2195.10 to receive and administer the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) to provide financial responsibility for owners and/or operators of underground motor fuel storage tanks. Under the conditions described in this Section, an owner and/or operator who is eligible for participation in the MFUSTTF may use this mechanism to partially fulfill the financial responsibility requirements for eligible USTs. To use the MFUSTTF as a mechanism for meeting the requirements of LAC 33:XI.1107, the owner and/or operator must be an *eligible participant* as defined in Subsection A of this Section. In addition, the owner and/or operator must use one of the other mechanisms described in LAC 33:XI.1111-1119 or 1123-1125 to demonstrate financial responsibility for the amounts specified in Subsection C of this Section, which are the responsibility of the participant and not covered by the MFUSTTF.

A. Definitions. The following terms shall have the meanings ascribed to them as used in this Section.

* * *

Eligible Participant—any owner of an operating or newly-installed underground storage tank who has registered ~~said~~ the tank with the department prior to the date of a release, has paid the annual tank registration fees along with any late payment fees, ~~and~~ has met the financial responsibility requirements imposed by Subsection B of this Section-, and, if applicable, has met the noncompliance financial responsibility amounts provided in R.S. 30:2195.10.

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B. Financial Responsibility Requirements for MFUSTTF Participants

1. Unless revised by the administrative authority in accordance with R.S. 30:2195.9(A)(3), MFUSTTF participants taking response actions must pay the following amounts before any disbursements are made from the fund:

a. ~~\$15,000~~ 10,000 per occurrence for cleanup and an additional \$10,000 per occurrence for third-party judgments, for the period from July 15, 1988 through December 31, 1989; and

b. \$15,000 per occurrence for cleanup and an additional \$15,000 per occurrence for third-party judgments, for the period from January 1, 1990 through July 14, 1992-;

c. for the period from July 15, 1992 through June 15, 1995:

i. \$5,000 per occurrence for cleanup and an additional \$5,000 for third-party judgments for owners with 1 to 12 tanks in Louisiana;

ii. \$10,000 per occurrence for cleanup and an additional \$10,000 for third-party judgments for owners with 13 to 99 tanks in Louisiana; and

iii. \$15,000 per occurrence for cleanup and an additional \$15,000 for third-party judgments for owners with 100 or more tanks in Louisiana; and

d. \$5,000 per occurrence for cleanup and an additional \$5,000 per occurrence for third-party judgments, for the period from June 16, 1995 through December 31, 2001.

2. Thereafter, the advisory board shall review the financial responsibility requirements on an ~~these amounts~~ annually basis and may recommend adjustments to the requirements to the administrative authority.

3. ~~The administrative authority shall determine and set these financial responsibility requirements amounts~~ annually [as provided in R.S. 30:2195.9(A)(3)].

34. Eligible participants must demonstrate financial responsibility for the established amounts by the allowable mechanisms described in LAC 33:XI.1111-1119 and LAC 33:XI.1123-1125.

4. Substitution of a Departmental Lien

a. A lien filed by the department with the same ranking and privilege as that authorized by R.S. 30:2195(F)(2) may be substituted for the financial responsibility requirement of this Section, but in no case shall the lien be substituted on behalf of an owner and/or operator who continues to operate the system. The use of the funds in the MFUSTTF during any fiscal year on a site for which the lien, as authorized by this Section, has been used to substitute for the financial responsibility amount shall not exceed 20 percent of the amount collected in the previous fiscal year. The administrative authority is authorized to exceed the 20 percent limitation contained in this Paragraph upon recommendation by the advisory board.

b. Upon recommendation by the advisory board to exceed the 20 percent limitation as provided in Subparagraph B.4.a of this Section, the administrative authority shall provide written notification to the Senate Committee on Environmental Quality and the House Committee on the Environment listing the project name, the project location, and the amount of the project that exceeds the 20 percent limitation.

C. - D.2. ...

3. For sites with more than one eligible release and with multiple owners and/or operators wishing to use MFUSTTF monies, cost effective procedures shall require that the multiple owners and/or operators provide to the administrative authority a single investigation and corrective action plan that complies with the requirements of LAC 33:XI.709, 711, and 715. The MFUSTTF shall reimburse the owners and/or operators only after the submittal of one certified request for reimbursement for work that has been completed according to the administrative authority's approved investigation and corrective action plan.

4. For sites with more than one eligible release and with multiple owners and/or operators wishing to use MFUSTTF monies who cannot agree on the selection of a single qualified response action contractor (RAC) for the purpose of complying with Paragraph D.3 of this Section, or who have failed to begin investigation or corrective action within the time required by the administrative authority, the administrative authority shall select a RAC to carry out the investigation and/or corrective action or order the respective owners and/or operators to

begin investigation or corrective action without MFUSTTF monies. The administrative authority, in choosing a RAC, shall solicit notices of interest in the project from all approved RACs and select a RAC randomly through a public drawing from all RACs expressing an interest in the project. The RAC selected shall not be one currently under contract to any one of the multiple owners and/or operators of the site. Owners and/or operators shall continue to monitor site cleanup and shall sign and submit a sworn application requesting reimbursement. Thereafter, the administrative authority shall determine all reasonable costs and shall pay the RAC directly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and specifically 2195-2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), LR 27:521 (April 2001), amended by the Office of Environmental Assessment, LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:**.